

*In re*  
MAKKI.

“When apart from, and independently of, any other reliefs which an appellant seeks in an appeal from a decree, he seeks distinct relief on the ground that by the decree under appeal the costs of the parties in the proceedings which terminated with the decree have not been properly assessed or apportioned, should the value of such distinct relief be reckoned as part of ‘the subject-matter in dispute’ for the purposes of the first schedule of the Court Fees Act, or should the said value be excluded from computation?”

*Ryru Nambiar* for appellant in S.R. No. 13187.

*Mr. Wedderburn* for the Government Pleader *contra*.

DECISION.—The appellant has made the costs the subject-matter of dispute, and therefore a Court fee stamp is leviable.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Davies and Mr. Justice Boddam.*

QUEEN EMPRESS

*v.*

VASUDEVAIYYA.

*Criminal Procedure Code, Act X of 1882, s. 419—‘Presented.’*

The Criminal Procedure Code, s. 419, requires that a criminal appeal shall be delivered to the proper officer of the Court either by the appellant or his pleader. Where a petition of appeal was not presented to the Court, but was deposited in a petition box kept for the convenience of parties within the Court precincts and intended for the deposit of papers for the Court :

*Held*, that it had not been presented and was rightly returned for legal presentation.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by L. C. Miller, Acting District Magistrate of South Canara.

The case was stated as follows :—

“I have the honour to forward the petition of pleader M.R. Ry. Pungal Subba Row on behalf of Vasudavayya, accused in calendar case No. 510 of 1895, on the file of the Stationary Second-class Magistrate of Udipi, against the order of the Acting Head Assistant Magistrate, rejecting the appeal against the finding and sentence of the Sub-Magistrate, for the order of the High Court.

“The petition of appeal was first placed in the petition box kept within the precincts of the Head Assistant Magistrate’s Court within the prescribed time. The Head Assistant Magistrate returned the petition with the following endorsement, dated 11th January 1896 :—

“ ‘Criminal appeals must be personally presented or by pleader.’

“The appeal was again presented in person, but on this occasion the Magistrate passed orders, dated 29th January that ‘the appeal is out of time and is therefore rejected.’

“The High Court has held in the Criminal Revision Case 316 of 1884(1) and in *Queen Empress v. Arlappa*(2), that the transmission of an appeal *by post* was not a sufficient compliance with section 419, Criminal Procedure Code. But in this case the appeal petition was placed in a receptacle kept for the convenience of parties within the Court precincts intended for the deposit of papers for the Court. If this be considered duly presented and a sufficient compliance with the provisions of the section, I request that the appeal may be ordered to be taken on the file and heard on its merits.”

Counsel did not appear.

ORDER.—As ruled by the learned Chief Justice in *Queen Empress v. Arlappa*(2) the word ‘presented’ in section 419 of the Code of Criminal Procedure “evidently means that such petition shall be delivered to the proper officer of the Court either by the appellant or his pleader.”

It is clear that what the law requires is that the petition of appeal be presented by one or other of those two persons, and not by any body else. In order to secure this, it is necessary that the presentation be made in person. So that the same reason applies for not recognizing a petition found in a petition box as to one sent by post, namely, that it might have been deposited there by a third person who could not legally present it. The Head Assistant Magistrate was, therefore, right in returning the petition of appeal in this case for legal presentation, and when that presentation was made, the appeal being time-barred was rightly rejected.

(1) Weir’s Criminal Rulings, 3rd edition p. 1006.

(2) I.L.R., 15 Mad., 137.